

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>B.A. CLARK INVESTMENT JOSEPHINE STREET LLC</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF COMMISSIONERS.</p>	<p>Docket No.: 50984</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on January 21, 2009, Karen E. Hart and Sondra W. Mercier presiding. Petitioner was represented by Gary C. Moschetti, Esq. Respondent was represented by Eugene J. Kottenstette, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2007.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**1530 Josephine Street, Denver, Colorado
(Denver County Schedule No. 02363-00-007-000)**

The subject property is a former grocery store of approximately 25,000 square feet that was built in the 1960s. The building is currently subject to a sublease agreement with Church in the City. The subject site is 111,408 square feet (2.56 acres) in size.

The owner of the property, B.A. Clark Investment Josephine Street LLC, protested the 2007 valuation to the Assessor on May 30, 2007. This protest was denied. A Notice of Determination dated September 7, 2007 was sent. The property owner did not appeal.

Church in the City occupies the subject under a sublease agreement. With the agreement of the owner, Church in the City filed a petition for abatement or refund of taxes to Respondent, received March 7, 2008. Respondent denied the appeal. Michael Walter, officer for Church in the

City, then filed a Petition to the State Board of Assessment Appeals, dated August 29, 2008, on the grounds that “The assessor’s office over-valued the property for tax purposes.”

At the hearing, Respondent moved to dismiss the appeal based upon res judicata, referencing *Red Junction, LLC v. Mesa County Board of County Commissioners*, 174 P.3d 841 (Colo.App. 2007). Respondent also contends that under CRS section 39-10-114(1)(a)(I)(D) the owner’s 2007 protest, and the Notice of Determination sent by the Assessor prevent the owner from filing a petition for abatement/refund of taxes based upon overvaluation for that same tax year. Respondent contends that the owner affected whatever rights Church in the City had under the sublease to protest the taxes or seek an abatement/refund of taxes. Respondent therefore contends that Church in the City is prevented from filing this petition, based upon overvaluation, for abatement/refund of taxes for tax year 2007.

Petitioner contends that section 39-10-114(1)(a)(I)(D) is not applicable since the abatement and refund petition for 2007 is not based on an error in valuation, but on an erroneous valuation for assessment referencing *Boulder Country Club v. Boulder County Board of Commissioners*, 97 P.3d 119 (Colo.App. 2003). Petitioner contends that the assessment for valuation in 2007 must be reduced so that it is the same as that in 2008, which is before the Board under Docket Number 51452.

The Board finds that the petition for abatement/refund of taxes for tax year 2007 is not barred by the doctrine of res judicata. *Red Junction* dealt with two abatement/refund petitions for the same tax year; therefore the court looked to whether or not the doctrine of res judicata barred the second petition. Here the property taxes have been challenged under two separate statutory methods, the protest procedure under section 39-5-122, and the abatement/refund procedure under section 39-10-144.

The Board also finds that the petition for abatement/refund of taxes for tax year 2007 is not barred by CRS section 39-10-114(1)(a)(I)(D).

CRS section 39-10-114 sets forth the authority for a taxpayer to file a petition for refund or abatement of taxes if Petitioner believes that their property taxes have been levied erroneously or illegally. No abatement or refund of taxes will be permitted based upon the ground of overvaluation of property if an objection to such valuation has been made and a notice of determination mailed to the taxpayer. C.R.S. 39-10-114(1)(a)(I)(D). However, an abatement or refund of taxes based on an erroneous valuation will be permitted. *Boulder Country Club v. Boulder County Board of Commissioners*, 97 P.3d 119 (Colo. App. 2003).

The Board believes that Petitioner is correct in that the assessment for valuation in 2007 must be reduced so that it is the same as that in 2008. This is supported by the Court of Appeals’ holding in *Cherry Hills Country Club v. Arapahoe County*, 832 P.2d 1105 (Colo. App. 1992) that the valuation of a taxpayer’s property should be the same for both years in a tax cycle, absent limited statutory exceptions.

For tax year 2008, in Docket Number 51452, the Board reduced the actual value for the subject property to \$3,350,000.00 based on Respondent's recommended value. The Board finds that the valuation for tax year 2007 must equal that of 2008.

ORDER:

The Respondent is ordered to cause an abatement/refund to Petitioner, based on a 2007 actual value for the subject property of \$3,350,000.00

The Denver County Assessor is directed to change his records accordingly.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of CRS § 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of CRS § 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

CRS § 39-10-114.5(2) (2008).

DATED and MAILED this 30th day of April 2009.

BOARD OF ASSESSMENT APPEALS

Karen E Hart
Karen E. Hart

Sondra W Mercier
Sondra W. Mercier

I hereby certify that this is a true
and correct copy of the decision of
the Board of Assessment Appeals.

Heather Flannery
Heather Flannery

